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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,706	02/25/2004	Paul Swenson	01841-22363.NP	3682
20551 7590 07/11/2008 THORPE NORTH & WESTERN, LLP. P.O. Box 1219 SANDY, UT 84091-1219				
EXAMINER				
FIELDS, BENJAMIN S				
ART UNIT		PAPER NUMBER		
3692				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/786,706

**Applicant(s)**

SWENSON ET AL.

**Examiner**

BENJAMIN S. FIELDS

**Art Unit**

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Introduction*

1. A **request for continued examination** under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), **was filed** in this application **after final rejection**. Since this application is **eligible** for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the **finality** of the previous Office action has been **withdrawn** pursuant to 37 CFR 1.114. Applicant's submission filed on 23 June 2008 has been entered.
2. The following is a **NON-FINAL** Office Action in response to the communication received on 23 June 2008. Claims 1-20 are now pending in this application.

### *Response to Amendments*

3. The Examiner acknowledges the applicant's remarks regarding a telephonic interview held 11 October 2007, however, notes that there is **NO OFFICIAL RECORD** of such telephonic interview of any sort in relation to the instant application on file.
4. Applicants Amendments to Claims 1-19 has been acknowledged in that: **Claims 1 and 19 have been amended; NO Claims have been canceled; Claim 20 has been newly added;** hence, as such, **Claims 1-20 are pending in this application.**

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Exhibit U in view of Harmon et al. (US PG Pub. No. 2004/0181468), [hereinafter Harmon].

Evidence of public use and knowledge of the invention prior to Applicant's earliest priority date of 6 February 2004 is provided as follows:

EXHIBIT	DESCRIPTION
U	FREEDOM FIELD <URL: <a href="http://www.bright.net">http://www.bright.net</a> > [online], March 2001 [retrieved on 2005-04-11]. Retrieved from the Internet: <URL: <a href="http://www.archive.org">http://www.archive.org</a> >
V	HEALING FIELD <URL: <a href="http://www.healingfield.org">http://www.healingfield.org</a> > [online], September 2002 [retrieved on 2005-04-11]. Retrieved from the Internet: <URL: <a href="http://www.archive.org">http://www.archive.org</a> >
W	PERPETUAL FUNDRAISING SYSTEM <URL: <a href="http://www.colonialflag.com">http://www.colonialflag.com</a> > [online], May 2001 [retrieved on 2005-04-11]. Retrieved from the Internet: <URL: <a href="http://www.archive.org">http://www.archive.org</a> >

This evidence, taken as a whole, shows that the invention, as claimed, was both in "public use" and "knowledgeable" prior to 6 February 2004.

Referring to Claim 1: Exhibit U teaches a method for raising funds for a charitable cause comprising the steps of: identifying a charitable cause in need of funding (Exhibit U//The need for funding here is represented by assisting troops across the country//);

providing a plurality of patriotic flags to comprise a healing field (Exhibit U); linking a display of the healing field to the charitable cause in need of funding (Exhibit U); displaying the healing field as part of a public awareness campaign (Exhibit U); selling the plurality of patriotic flags that are displayed in the healing field and donating proceeds to the charitable cause in need of funding (Exhibit U).

Exhibit, however, does not expressly discuss the plurality of patriotic flags temporarily occupying a location not dedicated to providing a permanent display of the patriotic flags; *at least a portion of* proceeds to the charitable cause in need of funding; and removing the plurality of patriotic flags to eliminate the healing field from the location.

Harmon, in a similar environment, shows multiple fund raising events (a healing field could be an example of such) temporarily occupying a location (or period of time) not dedicated to providing a permanent display (Harmon: Page 1, Paragraphs 0004-0008); *at least a portion of* proceeds to the charitable cause in need of funding (Harmon: Abstract; See Figures; See Claims). Regarding removing the plurality of patriotic flags to eliminate the healing field from the location, the Examiner notes that this would obviously take place if the healing field even were held at certain times of the year or at certain locations, etc.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method of Exhibit U with the features causing the charity fund raising event to be periodic/temporary and allowing at least a portion of proceeds to go to the charitable cause in need of funding for the purpose of further inhibiting charitable

giving and create better manners to solicit funds (Harmon: Page 1, Paragraphs 0002-0008).

Referring to Claim 2: Exhibit U discloses a method, wherein the step of providing a plurality of patriotic flags to comprise a healing field further comprises the step of identifying a historical event to be symbolized by the plurality of flags (Exhibit U //The 'historical event' mentioned is the support which will be provided by assisting in this effort//).

Referring to Claim 3: Exhibit U shows a method, wherein the step of displaying the healing field further comprises the step of positioning the plurality of patriotic flags in a predetermined pattern (Exhibits U, V//Exhibit U refers to a predetermined pattern in which patriotic flags can be placed//).

Referring to Claim 4: Exhibit U discloses a method, wherein the predetermined pattern could be that of a geometric nature.

In addition, the Examiner notes applicant's disclosure of the predetermined pattern being that of a geometric pattern/nature, however, the geometric pattern/nature of the pattern (i.e. aesthetics), is found to be nonfunctional descriptive material and does not alter how the method operates. This type of data qualifies as nonfunctional descriptive material since there is no interrelationship between the type of pattern and the method for operating the system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Referring to Claim 5: Exhibit U teaches a method, wherein the predetermined pattern could be that of a linear array placed along an area selected from the group consisting of a path, a body of water, a river, a building, a structure, a road, a highway, a trail, a hill, a mountain, and a military base.

In addition, the Examiner notes applicant's disclosure of the predetermined pattern being that of a geometric pattern/nature, however, the geometric pattern/nature of the pattern (i.e. aesthetics), is found to be nonfunctional descriptive material and does not alter how the method operates. This type of data qualifies as nonfunctional descriptive material since there is no interrelationship between the type of pattern and the method for operating the system. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Referring to Claim 6: Exhibits U and V each disclose a method further comprising the step of incorporating information within the predetermined pattern.

Referring to Claim 7: Exhibits U and V each show a method, further comprising the step of incorporating a graphic message within the predetermined pattern.

Referring to Claim 8: Exhibits U and V each disclose a method, wherein the step of linking a display of the healing field to the charitable cause further comprises the step of advertising a purpose for the plurality of patriotic flags and the healing field, wherein the purpose links the plurality of patriotic flags and the healing field to the charitable

cause (Exhibits U, V//The website disclosed herein serves as a means of advertisement for such a charitable cause//).

Referring to Claim 9: Exhibit U teaches the limitations of Claim 1.

Exhibit U, however, does not expressly discuss a method, wherein the step of advertising the purpose for the plurality of patriotic flags and the healing field further comprises the step of advertising through a medium selected from the group consisting of radio stations, television stations, newspapers, magazines.

The Examiner notes that advertising via the means selected from the group consisting of radio stations, television stations, newspapers, magazines are common, old, and well known in the art. Therefore, it would be obvious to utilize, in addition to the present website, additional avenues of promoting (i.e. radio stations, television stations, newspapers, magazines) the patriotic healing field fundraising event.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the method and system of Exhibit U for a patriotic flag healing field fundraising event with an even greater ability to promote this fundraising event via radio stations, television stations, newspapers, and/or magazines for the purpose of enabling a vast majority of people to support such a charitable cause (Exhibit U).

Referring to Claim 10: Exhibits U and V each disclose a method further comprising the step of obtaining one or more sponsors to pay for the plurality of patriotic flags in the healing field (Exhibits U, V//Requests are made via the site for sponsors to 'pledge' some sort of fundraising for the goods/services rendered//).



Referring to Claim 11: Exhibits U and V each show a method, wherein the one or more sponsors comprises a person that pays to sponsor one or more flags in the plurality of patriotic flags (Exhibits U, V//The sites allow an individual, company, and/or organization to sponsor the fundraising event//).

Referring to Claim 12: Claim 12 parallels the limitations of Claim 11. As such, Claim 12 is rejected under the same basis as is Claim 11 as mentioned supra.

Referring to Claim 13: Exhibits U and V each teach a method, wherein the step of selling the plurality of patriotic flags further comprises the step of selling the plurality of patriotic flags through an auction (Exhibit U//The site composes an auction type feature/functionality which allows sponsorship of the fundraising event//).

Referring to Claim 14: Exhibits U and V each disclose a method, wherein the auction is an internet auction (Exhibits U, V//These sites are both accessible via the internet//).

Referring to Claim 15: Exhibit U shows a method, wherein the step of selling the plurality of patriotic flags further comprises the step of selling the plurality of patriotic flags through an advertising campaign (Exhibit U//The site is an advertising campaign//).

Referring to Claim 16: Exhibits U and V each disclose a method, wherein the step of selling the plurality of patriotic flags further comprises the step of placing advertisements near the healing field (Exhibits U, V//Use of the sites are the main avenue for sales for the fundraising campaign, however, additional sponsor near the healing field assist in helping to accomplish the fundraising goal//).

Referring to Claim 17: Claim 17 reflects the limitations of Claim 9. As such, Claim 17 is rejected under the same basis as is Claim 9 as mentioned supra.

Referring to Claim 18: Claim 18 parallels the limitations of Claim 9. As such, Claim 18 is rejected under the same basis as is Claim 9 as mentioned supra.

Referring to Claim 19: Claim 19 is the system for the method of Claim 1. As such, Claim 19 is rejected under the same basis as is Claim 1 as mentioned supra.

Referring to Claim 20: Claim 20 reflects the limitations of Claim 1. As such, Claim 20 is rejected under the same basis as is Claim 1 as mentioned supra.

### ***Response to Arguments***

7. Applicants arguments filed 23 June 2008 have been fully considered but have been found to be **moot** and **non-persuasive** in view of the new grounds of rejection presented herein.

### **Examiner Note**

8. **The Examiner has pointed out particular reference(s) contained in the prior art of** record within the body of this action for convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. **Applicant**, in preparing the response, should **fully consider the entire reference** as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lawrence et al. (US PG Pub. No. 2002/0116215) teach a method and system for administering an on-line fund-raising event.

Abramson (US PG Pub. No. 2003/0195766) discusses a method of fundraising for a charitable cause.

Any inquiry concerning this communication should be directed to BENJAMIN S. FIELDS at telephone number 571.272.9734. The examiner can normally be reached MONDAY through THURSDAY, between the hours of 9AM and 7PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, KAMBIZ ABDI can be reached at (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin S. Fields

/Frantzy Poinvil/

Primary Examiner, Art Unit 3692

4 July 2008